

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

ADAPTIX, INC.,	§	
v.	§	
ALCATEL-LUCENT USA, INC. AND	§	No. 6:12-cv-0022-RWS-CMC
AT&T MOBILITY LLC	§	
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ADAPTIX, INC.,	§	
v.	§	
ALCATEL-LUCENT USA, INC. AND	§	No. 6:12-cv-0122-RWS-CMC
CELLCO PARTNERSHIP D/B/A	§	
VERIZON WIRELESS	§	
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ADAPTIX, INC.,	§	
v.	§	
ALCATEL-LUCENT USA, INC. AND	§	No. 6:12-cv-0123-RWS-CMC
SPRINT SPECTRUM L.P.	§	

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION  
TO CONTINUE JULY 20, 2015 TRIAL SETTING**

Plaintiff, Adaptix, Inc. ("Adaptix"), respectfully submits this this Opposition to the motion of defendants, Alcatel-Lucent USA, Inc. ("ALU"), AT&T Mobility LLC ("AT&T"), Cellco Partnership d/b/a Verizon Wireless ("Verizon"), and Sprint Spectrum L.P. ("Sprint") (collectively "Defendants"), to Continue July 20, 2015 Trial Setting. For the reasons stated below, Defendants' motion should be denied.

## **I. The Alcatel-Lucent Cases Were Filed First And Therefore Should Be Tried First**

Adaptix filed the Alcatel/ATT case on January 8, 2012. This was the first case involving U.S. Patent Nos. 6,870,808, 6,904,283 and 7,146,172 (“the base station patents”). In contrast, the earliest Ericsson case was filed almost 6 months later in June 2012. On May 12, 2015, this Court set a trial date in the Alcatel cases for the week of July 20, 2015. *See 6:12-cv-122, Dkt. No. 353, p. 1.* Thereafter, on May 27, 2015, this Court set a trial date for the later filed Ericsson case for August 24, 2015. *See 6:12-cv- 369, Dkt. No. 256, p. 1.*

Nonetheless, Defendants are now trying to reverse the order of trial and go after Ericsson, thus having two bites at the validity apple. Defendants’ offer to consolidate the Alcatel cases “only” in exchange for a continuance is nothing more than a disingenuous threat to reverse the order of trial. The Court should not reward ALU’s tactical maneuvers to avoid the trial of the ALU case, now pending almost 3 ½ years.

## **II. This is ALU’s Second Attempt To Proceed After Ericsson**

This is not the first time that Defendants have attempted to avoid being the first to trial. On September 30, 2014, the Court set the pretrial conferences in the ALU and Ericsson cases as follows:

- 6:12-cv-022 (ALU) March 24, 2015
- 6:12-cv-122 (ALU) March 25, 2015
- 6:12-cv-123 (ALU) April 23, 2015
- 6:12-cv-369 (Ericsson) April 24, 2015
- 6:13-cv-049 (Ericsson) May 27, 2015
- 6:13-cv-050 (Ericsson) May 28, 2015

*See, e.g.*, 6:12-cv-122, Dkt. 257.

On October 28, 2014 (a day after the Court’s deadline and less than one day before the hearing scheduled for October 29), Defendants filed a Proposal to Continue Pretrial Conference and Related Deadlines. *See, e.g.*, 6:12-cv-122, Dkt. 278. Not surprisingly, it was after the Ericsson pretrial conference that was scheduled for April 24, 2015. *Id.*

### **III. Defendants Were Not Diligent or Forthcoming**

Defendants’ actions are plainly dilatory. This Court explicitly stated: “[a]t the final pretrial conference, the parties will be assigned a specific trial date beginning within four weeks of the final pretrial conference. Parties should be prepared to conduct jury selection at any time after the final pretrial conference.” *See, e.g.*, 6:12-cv-122, Dkt. 186 (emphasis in original). Accordingly, as of March 11, 2015, Defendants were well aware that all witnesses must be available at least four weeks from the pre-trial conference date.

### **IV. The Conflicts Identified by the ALU Defendants Are Disingenuous**

Defendants state that their non-infringement expert Dr. Andrews returns from “international travel” on July 20. Dr. Andrews, however is not scheduled to testify until at least July 24, 2015. Defendants also state that AT&T’s corporate witness, Laurie Bigler, has “international travel” planned for July 24, and Verizon’s corporate witness William Stone is presenting at an “important business” meeting on July 22 in New Jersey. However, AT&T and Verizon are both international corporations with countless “international” travel and “important” business meetings, which obviously can be arranged to accommodate the present trial schedule.

Moreover, Defendants failed to provide a single declaration of Dr. Andrews, Laurie Bigler or William Stone. Accordingly, there is no record evidence of any conflict.

**V. Defendants' Belated Offer to Consolidate**

Defendants' belated offer to consolidate is a transparent effort to have this Court reverse the order of trial and place the Ericsson trial before the ALU trial, a case filed six months before Ericsson.

ALU has been aware, since May 12, 2015, that a trial date was set by this Court for July 20, 2015. However, ALU did not contact Plaintiff until May 27, 2015 to request a continuance. ALU did not file its motion for a continuance until Friday May 29, 2015 at 4:39PM EST, twenty-one minutes before the close of business.

Finally, there is little likelihood that the ALU/Verizon case will be tried. If the jury concludes, as ALU contends, that the patents-in-suit are invalid, there will be no ALU/Verizon trial. Further, should the jury find that ALU infringes, it is highly likely that ALU will settle.

**VI. Conclusion**

For the reasons stated above, Defendants' motion to continue should be denied.

Dated: May 31, 2015

Respectfully submitted,

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**ATTORNEYS FOR THE PLAINTIFF  
ADAPTIX, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been served on May 31, 2015 to all counsel of record who are deemed to have consented to electronic service via the Court's ECF system per Civil Local Rule CV-5(a)(3).

/s/ Thomas R. Fulford